

1. **Parties.** This is a contract for services between the State of Vermont, Department of Vermont Health Access (hereafter called "State"), and the Vermont Public Transportation Association, with a principal place of business in Middlebury, VT (hereafter called "Contractor"). The Contractor's form of business organization is a Domestic Not for Profit Corporation. The Contractor's local address is c/o ACTR 297 Creek Road, Middlebury, VT 05753. It is the Contractor's responsibility to contact the Vermont Department of Taxes to determine if, by law, the Contractor is required to have a Vermont Department of Taxes Business Account Number.
2. **Subject Matter.** The subject matter of this contract is services generally on the subject of providing Broker services to implement and operate a Medicaid non-emergency medical transportation system in the state of Vermont to provide for, arrange and facilitate reimbursement of transportation for eligible Vermont Medicaid beneficiaries who have no other means to get to and from Medicaid billable, non-emergency medical appointments. Detailed services to be provided by the Contractor are described in Attachment A. In addition, further information about program specifications, including background check procedures and detail, can be found in DVHA's "Medicaid Non-Emergency Medical Transportation (NEMT) Procedure Manual", found online at <http://dvha.vermont.gov/providers/fy16-nemt-manual.pdf>.
3. **Maximum Amount.** In consideration of the services to be performed by Contractor, the State agrees to pay Contractor, in accordance with the payment provisions specified in Attachment B, a sum not to exceed \$26,978,491.60.
4. **Contract Term.** The period of Contractor's performance shall begin on January 1, 2017 and end on December 31, 2018. This contract may be extended for two (2) additional one (1) year terms.
5. **Prior Approvals.** If approval by the Attorney General's Office or the Secretary of Administration is required, (under current law, bulletins, and interpretations), neither this contract nor any amendment to it is binding until it has been approved by either or both such persons.

Approval by the Attorney General's Office is required.

Approval by the Secretary of Administration is required.

6. **Amendment.** No changes, modifications, or amendments in the terms and conditions of this contract shall be effective unless reduced to writing, numbered and signed by the duly authorized representative of the State and Contractor.

7. **Contacts and Notices:** The contacts for this award are as follows:

	<u>State Fiscal Manager</u>	<u>State Program Manager</u>	<u>For the Contractor</u>
Name:	Susan Whitney	Peter McNichol	James Moulton
Phone #:	802-241-0248	802-879-5935	802-388-2287
E-mail:	<a href="mailto:Susan.whitney@vermont.gov">Susan.whitney@vermont.gov</a>	<a href="mailto:Peter.McNichol@vermont.gov">Peter.McNichol@vermont.gov</a>	<a href="mailto:jim@actr-vt.org">jim@actr-vt.org</a>

8. **Cancellation.** This contract may be cancelled by either party by giving written notice at least 120 calendar days in advance. The State may terminate this contract following a finding of material breach of its terms following a reasonable cure period as described in Attachment B. Notwithstanding the above provisions, if a

governmental agency with due authority determines that a program or facility operated by the Contractor, wherein services authorized under this contract are provided, is not in compliance with State and Federal law or is operating with deficiencies the State may terminate this contract immediately and notify the Contractor accordingly. Also, in the event that federal funds supporting this contract become unavailable or are reduced, the State may cancel this contract with no obligation to pay the Contractor from State revenues.

**9. Attachments.** This contract consists of 30 pages including the following attachments, which are incorporated herein:

Attachment A - Specifications of Work to be Performed  
Attachment B - Payment Provisions  
Attachment C – Standard State Provisions for Contracts and Grants  
Attachment E - Business Associate Agreement  
Attachment F - Agency of Human Services' Customary Contract Provisions

The order of precedence of documents shall be as follows:

- 1). This document
- 2). Attachment D (if any)
- 3). Attachment C
- 4). Attachment A
- 5). Attachment B
- 6). Attachment E (if any)
- 7). Attachment F
- 8). Other Attachments (if any)

**WE THE UNDERSIGNED PARTIES AGREE TO BE BOUND BY THIS CONTRACT.**

**BY THE STATE OF VERMONT:**

**BY THE CONTRACTOR:**

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STEVEN COSTANTINO, COMMISSIONER      DATE  
AHS/DVHA  
NOB 1 South, 280 State Drive  
Waterbury, VT 05671-1010  
Phone: 802-241-0239  
Email: [Steven.Costantino@vermont.gov](mailto:Steven.Costantino@vermont.gov)

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RANDALL SCHOONMAKER, VICE-CHAIRMAN      DATE  
Vermont Public Transportation Association  
c/o SEVT 45 Mill Street  
Windsor, VT 05363  
Phone: 802-464-8497  
Email: randys@moover.com

## ATTACHMENT A SPECIFICATIONS OF WORK TO BE PERFORMED

The State enters into this contract with Vermont Public Transportation Association (hereinafter “Contractor”) to provide for the arrangement of and reimbursement for medically necessary transportation for Vermont Medicaid eligible members to and from Medicaid billable appointments. Contractor will administer and maintain a statewide system to facilitate access to transportation services through subcontracting with local area transportation providers for the actual provision of the necessary transport.

### **DEFINITIONS:**

Capitalized terms used in this Contract not specifically defined in the text shall have the following meanings:

**“Beneficiary”:** A person eligible for non-emergency medical transportation services under the Medicaid program managed by the Department of Vermont Health Access. See also **“Member”**.

**“Broker”:** A local public transit organization who has subcontracted with the Contractor to provide transportation services in their particular service area.

**“Carrier”:** Mode of transport engaged to provide non-emergency medical transportation; for example, volunteer drivers, taxis, vans, buses, etc.

**“Contractor”:** Entity that has contracted with the State to administer and maintain a statewide system to facilitate access to transportation services through subcontracting with local brokers to provide NEMT rides to eligible Vermont Medicaid members. .

**“Cancellation”:** The withdrawal of a trip request by a member that occurs within the prescribed acceptable period for such action. Twenty-four (24) hour notice of cancellation is generally encouraged.

**“Center for Medicare and Medicaid Services (CMS)”:** A division of the federal Department of Health and Human Services, CMS oversees the administration of all Medicaid programs.

**“Eligibility Verification System (EVS)”:** An automated system that enrolled broker/providers can access to verify member eligibility prior to providing services. Eligibility can be verified either through the HP Voice Response System or through the online Medicaid portal at [www.vtmedicaid.com](http://www.vtmedicaid.com).

**“Estimated Time of Arrival (ETA)”:** The projected time that the vehicle shall pick up the passenger.

**“Excluded Parties List System (EPLS)”:** A Web-based system maintained by US General Services Administration (GSA).

**“Health Insurance Portability and Accountability Act (HIPAA)”:** The federal law that governs the uniform electronic submission of claims and privacy of all insurers.

**“HPES”:** HP Enterprise Services is the State’s fiscal agent, responsible for processing claims for NEMT provided under this contract.

**“List of Excluded Individuals/Entities (LEIE)”:** Provides information to the health care industry, patients and the public regarding individuals and entities currently excluded from participation in Medicare, Medicaid and all other Federal health care programs.

**“Medically Necessary”:** Health care services, including diagnostic testing, preventive services, and aftercare that are appropriate in terms of type, amount, frequency, level, setting and duration to the member’s diagnosis

or condition. Medically necessary care must be consistent with generally accepted practice parameters as recognized by health care providers in the same or similar general specialty as typically treat or manage the diagnosis or condition and help restore or maintain the member's health, or prevent deterioration or palliate the member's condition, or prevent a likely onset of a health problem or detect an incipient problem.

Additionally, for those members eligible for Early and Periodic Screening, Diagnostic and Treatment (EPSDT), medical necessity includes a determination that a service is needed to achieve proper growth and development or prevent the onset or worsening of a health condition.

For transportation requests that ask for additional riders, "medically necessary" means that an additional person's presence is required both during transport and while at the location of treatment. If the presence of this additional person is not required at the place of treatment, then DVHA cannot pay for additional expenses if requested. All determinations of medical necessity are subject to final review by DVHA's Medical Director.

**"Member":** A person eligible for non-emergency medical transportation services under the Medicaid program managed by The Department of Vermont Health Access. See also "Beneficiary".

**"Mode":** Modes of transportation include:

- Free fixed-route public transportation
- Fixed and deviated route voucher or fare
- Volunteer driver trip (may have multiple riders)
- Taxi (may have multiple riders)
- Demand response public transport vehicle
- Immediate family, other relatives, or friends with vehicles

**"No-Show":** Member failure to show for a ride. A "No-Show" has occurred when the vehicle has arrived within the pickup window of the ETA, a valid cancellation of a trip request has not been made, and the rider has not boarded the vehicle within the specified wait time.

**"Non-Emergency Medical Transportation (NEMT)":** A covered service for members enrolled in Medicaid and Dr. Dynasaur programs. NEMT is a statewide service for providing transports for eligible people to and from necessary, non-emergency medical services.

**"Per Member Per Week (PMPW) Rate":** A pre-negotiated rate at which Broker will be reimbursed for providing transportation services for eligible members. Weekly payments are based on a formula which takes into account the number of unduplicated riders served in a set time period.

**"Pick Up and Drop off Point":** The pickup and drop off point for all rides should be at the member's home address. Special requests require approval by DVHA.

**"Prior Authorization (PA)":** A process used to ensure the appropriate use of health care services and benefits. The goal of the PA process is to ensure that the proposed request meets all set criteria, and that all appropriate, less-expensive alternatives have been given consideration. All transports must be prior authorized to qualify for reimbursement. Prior authorization/approval for specific programs such as Reach Up, and specific travel such as out-of-state, in-state/out-of-area are referenced in DVHA's Non-Emergency Medical Transportation Procedure Manual. The only exception to the PA requirement is if a member was granted retroactive Medicaid eligibility and had transportation expenses from the newly covered period that had not previously been paid but met all of the criteria for Medicaid transportation eligibility.

**"Provider":** Entity that transports a member to a verifiable, scheduled, Medicaid-billable appointment.

**"Registry or Registries":** The Registries of substantiated instances of abuse, neglect or exploitation of a child or vulnerable adult, maintained by AHS as pursuant to law.

**"Rider":** Passenger in a mode of transport.

**“Volunteer Driver”:** A driver offered through the Provider Network who does not reside in the same physical household as the Medicaid member and who provides the vehicle for transport; or a driver provided through the Broker who resides in the same physical household as the Medicaid member, is not related to the Medicaid member, and provides the vehicle for transport. All volunteers must go through a background check process, administered by the Broker.

The Contractor will administer and oversee a program which will arrange for and secure Non-Emergency Medical Transportation (NEMT) throughout the State for eligible Vermont Medicaid beneficiaries who do not have transportation as defined in DVHA’s Medicaid Non-Emergency Medical Transportation Procedure Manual, found at <http://dvha.vermont.gov/for-providers/transportation>. Periodic updates to this manual can occur with two month notice provided to the Contractor. The Contractor agrees to abide by the terms of the NEMT Manual, including any and all amendments. If an update to this manual will cause a financial impact to the contractor of more than \$10,000, The State will negotiate in good faith to amend this contract.

1. The Contractor will follow the terms of the NEMT Manual and:
  - a. Administer the NEMT program for a network of transportation providers with options for vehicles of sufficient size and scope to handle the needs of non-emergency Medicaid transportation- eligible Green Mountain Care Medicaid members throughout the State.
  - b. Arrange for only medically necessary transportation (excluding ambulance services) for eligible Vermont Medicaid beneficiaries who qualify for transportation services.
    - Arrange transportation at no cost to the Medicaid beneficiary.
    - The Contractor is strictly prohibited from imposing additional transportation charges on Medicaid beneficiaries for trips billed to Medicaid.
    - Subcontracted transportation carriers shall not impose any additional charges on beneficiaries.
  - c. Comply with all federal and State rules applicable to Medicaid providers.  
<http://www.vtmedicaid.com/assets/provEnroll/General Provider Agreement 5182015.pdf>
  - d. Ensure compliance with Medicaid procedures and provisions set forth in the DVHA’s Medicaid Provider Manual and any subsequent amendments.
  - e. Ensure compliance with all background check procedures (including conducting these checks upon initial hire and every month subsequently, per ACA rules) and provisions set forth in the DVHA’s Medicaid Provider Manual, the NEMT Manual, and any subsequent amendments.
  - f. Ensure that arrangements are made within each locality Statewide for the provision and reimbursement of non-emergency Medicaid transportation during non-business hours, and convey those arrangements to DVHA.
  - g. Confirm the ongoing eligibility of each beneficiary on a weekly basis.
  - h. Bear the expense of services provided, that are later denied either because the beneficiary was found to be ineligible for Medicaid on the date of service or because the service provided failed to meet Medicaid transportation criteria. This provision shall not apply if DVHA is responsible for errors, omissions or delays.
  - i. Mail to members denial notices for every transportation request that results in a denial of service. DVHA may approve the provision of notification by secure electronic mail if the Contractor can demonstrate to DVHA’s satisfaction that such notification complies with all applicable State and Federal rules, including State and Federal Medicaid rules and State and Federal Privacy and Security rules, including HIPAA and rules protecting Medicaid Member information.
  - j. Keep on-site copies of all notices sent to members, including denial notices, behavior contracts, no show documentation, and signed program rule documents for a period of not less than 7 years.
  - k. Advise members that medical, public transportation, or motor vehicle exemptions are due to expire and need to be updated.

- l. Ensure that the call center and the field offices provide continuous telephone coverage Monday through Friday between the hours of 7:45 am and 4:30 pm, excluding legal holidays. In addition, provide a voice mail system that beneficiaries may use to cancel scheduled transports after normal business hours. The contractor also must have in place a system where contact may be made after hours in the case of hospital discharges.
- m. When needed, must have the ability to allow for weekend transportation for those members in need of such services (for example, those members receiving M.A.T. or dialysis).
- n. Report any complaints by a beneficiary to DVHA within 24 hours of notification. This incident report should include the beneficiary's name, the driver and action(s) involved, and the issue that is being reported.
- o. Re-register all subcontractors annually.
- p. Ensure all subcontractors have proper, current insurance in place.
- q. Update all subcontractors on proper claim code and software protocols.
- r. Provide technical assistance with compliance with regard to changing software needs.
- s. Provide training on software, Medicaid regulation, specialized passenger service needs, and privacy/confidentiality compliance when necessary to all subcontractors.
- t. Provide management information systems software and data management programs that work with the existing HPES provider services systems in all situations requiring the need for HIPAA compliant software.
- u. Provide staff support and management services for software for billing and tracking, and troubleshooting assistance when necessary.
- v. Resolve questions relative to payments and denied claims.
- w. Maintain a working capital account and line of credit to those awaiting claim payments or in an emergency situation (i.e., equipment failures or systemic failures) to ensure uninterrupted service.
- x. Ensure adequate subcontractor reimbursement rates to ensure statewide network availability.

## 2. CALL CENTER

Upon completion of the Transition Period, the Contractor must have a fully functional Call Center which will provide TTY communication and relay service, and language interpreter services as necessary to facilitate communication with Vermont Medicaid beneficiaries.

Telephone line staffing must be adequate to meet or exceed the performance standards defined herein. In addition, all incoming calls must be recorded. These recordings must be saved for 365 days. The Contractor is required to maintain a call center which will:

- a. Maintain a toll-free number capable of fielding high call volumes.
- b. Verify a member's eligibility for service prior to ride provision through a screening procedure which also determines the member's level of need.
- c. Refer toll-free line callers to the appropriate Provider and/or program for covered services whether public transit, carpooling, or social service transportation including Medicaid.
- d. Approve doctor referrals for trips under 60 miles.
- e. Establish a system for monitoring out-of-area and out-of-State travel for medically necessary services and treatments. No out-of-State travel will be reimbursed unless Contractor's staff has reviewed and determined the need for this service.
- f. Directly assist beneficiaries to book lodging at approved locations using Contractor's credit card; this service ensures that only covered services are provided by having accommodations billed directly to the Contractor.
- g. Use advanced bookings and direct billing procedures to cover the cost of out-of-state travel and lodging that would otherwise present a burden to small providers or beneficiaries.

- h. Have a system in place to determine member satisfaction, including timely handling and responding to all complaint calls.
- i. Mediate disputes and/or resolve problems between those providing transportation and beneficiaries when special situations or complaints arise.
- j. Work closely with State staff to ensure that objectives and parameters of the Medicaid transportation components are met while complying with the DVHA NEMT Procedure Manual.

### 3. PERFORMANCE MONITORING AND IMPROVEMENT

Contractor must notify DVHA immediately when it becomes aware of any situation resulting in or likely to result in a significant negative impact on the program. Contractor must cooperate with DVHA to resolve such situation. Failure to report or reasonably cooperate with DVHA may result in consequences including financial withhold as described in Attachment B or material breach of this agreement.

### 4. PERFORMANCE STANDARDS

- A. The Contractor is required to perform quality control screening on a random sample of not less than ten percent (10%) of calls to ensure quality.
- B. The Contractor is required to maintain performance standards as outlined below and report all cases where the standard is not met as set out below:

NO.		Measure/Target	Reporting Requirements
1	Provide transportation (in accordance with NEMT manual) whenever a trip request is received with at least two business days' advanced notice to the broker	95% of the time	Contractor will report all cases where standard isn't met. This should be included in Contractor's monthly report.
2	Contractor will provide professional and courteous customer service to all members.	95% of the time	Contractor will report all complaints and resolutions in the weekly report. All calls must be recorded and retained for one year.
3	Calls will be answered by a live person within 3 minutes.	95% of the time	Contractor will report all cases where a member was on hold for more than 3 minutes. Include in monthly report.
4	Call abandonment rate shall be minimal. A call will be considered "abandoned" when a member hangs up before speaking with a live operator.	<8% of all calls are abandoned	Contractor will report all cases where a call was on hold for more than 3 minutes. Include in monthly report.
5	Members will arrive on time for their appointments.	95% of the time	Contractor will report all cases for member appointments. In cases when a member arrives late for an appointment the report shall document why and resolution in monthly report.
6	Contractor will pick up member within the timeline of the "On Time Pick Up Window" as defined in the NEMT manual. The requirement also applies to return trips.	95% of the time	Contractor will report exceptions as a part of their monthly report.
7	All provisions of the NEMT manual and contract shall be met.	100% of the time	Contractor will report 100% of compliance with written notification to members on rights and responsibilities of rides. Notice of decision and all adverse

			notifications to member on a weekly basis.
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## 5. REPORTING REQUIREMENTS:

Contractor will submit the following reports:

### a. Weekly Ride Count/Claims Basis Report:

Contractor shall submit to DVHA a weekly accounting of actual rides provided following the end of the previous week, including the member name and the date and time of the appointment. This report will contain the details on the background check status of all drivers enrolled with service providers for that week.

### b. Weekly progress report:

The Contractor shall submit weekly progress reports to DVHA staff via an email distribution list, as determined by DVHA. DVHA may request weekly reporting of data from the Monthly Performance Report, or any other data reasonably required to address performance issues or serious consumer complaints identified by DVHA.

### c. Monthly Performance Report:

Contractor shall provide all information necessary to demonstrate compliance with the performance standards listed in this contract as detailed in DVHA's Non-Emergency Medical Transportation Manual. This report will be provided on a monthly basis.

### d. Monthly trip report:

Within 30 days following the last day of the month, Contractor shall submit to State Contract Administrator a quarterly and a year-end spreadsheet in Excel format with the following information pertaining to the Medicaid program. Information to include the number and mode and cost of the trips for the following categories:

1. All Selected Trips (i.e. Scheduled-Taken)
2. All Member Rescheduled
3. All Selected Vendor(s) Rescheduled
4. All Members Canceled in Advance
5. All No-Show - Members
6. All No-Show - Drivers
7. All Selected Trips Scheduled within the last 48 hours (i.e. Last Minute Trip Request)

### e. Quarterly Financial Reports:

1. The contractor shall submit quarterly financial reports including unaudited balance sheet and profit and loss statements with a brief narrative on performance for the quarter; reports must be submitted to DVHA within 30 days following the end of a quarter.
2. Selected vendor shall compile balance sheets and profit and loss statements 90 days after the quarter ends.

f. The Contractor shall submit to DVHA a quarterly report regarding the call center, quality control, service issues, complaints, and proposed improvements for each regional provider.

## 6. TRANSITION PERIOD

January 1 – June 30, 2017 shall serve as a Transition Period when the Contractor creates a call center and all



other new infrastructure and operational methods required by the Agreement, including but not limited to providing monthly updates on insurance policy(ies), staff hired, office space obtained, banking, call center, operating protocols, electronic record system established, and staff training. DVHA will work with the Contractor as it works to fully meet this contract's requirements, and upon being fully operational and compliant, the parties may deem by mutual agreement that the Transition Period is complete on a date before June 30, 2017. During the Transition Period, the Contractor will only be required to meet all of the 2016 contractual obligations, and will not be deemed to be in breach for failing to meet new and additional obligations under this Agreement. During the transition period the posted NEMT Manual will be in full force and effective. Thirty (30) days prior to the transition date, DVHA will post the updated NEMT Manual.

7. Notices to the Parties Under This Agreement: To the extent notices are made under this agreement, the parties agree that such notices shall only be effective if sent to the following persons as representative of the parties:

	STATE REPRESENTATIVE	CONTRACTOR/GRANTEE
Name	Office of General Counsel DVHA	James Moulton, Chairman VPTA
Address	NOB 1 South, 280 State Drive Waterbury, VT 05671-1010	c/o ACTR 297 Creek Road Middlebury, VT 05753
Email	<a href="mailto:ahs.dvhalegal@vermont.gov">ahs.dvhalegal@vermont.gov</a>	<a href="mailto:jim@actr-vt.org">jim@actr-vt.org</a>

The parties agree that notices may be sent by electronic mail except for the following notices which must be sent by United States Postal Service certified mail: termination of contract, contract actions, damage claims, breach notifications, alteration of this paragraph.

#### **DVHA MONITORING OF CONTRACT**

The parties agree that the DVHA official State Program Manager is solely responsible for the review of invoices presented by the Contractor.

8. Subcontractor Requirements: Per Attachment C, Section 19, if the Contractor chooses to subcontract work under this agreement, the Contractor must first fill out and submit the Subcontractor Compliance Form (Appendix I – Required Forms) in order to seek approval from the State prior to signing an agreement with a third party. Upon receipt of the Subcontractor Compliance Form, the State shall review and respond within five (5) business days. A fillable PDF version of this Subcontractor Compliance Form is available upon request from the DVHA Business Office. Under no circumstance shall the Contractor enter into a sub-agreement without prior authorization from the State. The Contractor shall submit the Subcontractor Compliance Form to:

Susan Whitney, Grants and Contract Administrator  
[Susan.Whitney@vermont.gov](mailto:Susan.Whitney@vermont.gov)

Should the status of any third party or Subrecipient change, the Contractor is responsible for updating the State within fourteen (14) days of said change.

## ATTACHMENT B PAYMENT PROVISIONS

The maximum dollar amount payable under this agreement is not intended as any form of a guaranteed amount. The Contractor will be paid for products or services as specified in Attachment A on a Per Member Per Month basis up to the maximum allowable amount specified in this agreement. DVHA NEMT reimbursement formulas are based on a Per Member Per Month (PMPM) methodology; payments are actually broken down to Per Member Per Week (PMPW) increments. State of Vermont payment terms are on a weekly basis through HPES as outlined in Section E of Attachment B. In addition to the PMPM payment, the Contractor will be allowed to bill Medicaid for any complete trip that costs more than \$1,000.00. The cost of each trip will be for the full round trip and shall include lodging and all other medically and prior-approved expenses. If the trip was provided using a provider-owned vehicle, the submitted claims must include documentation outlining the research involved in determining the least costly mode appropriate for the specific appointment. DVHA staff will review all manually-submitted claims that total over \$1,000 for appropriate utilization, efficiency, and best practice. DVHA staff must prior authorize each claim that totals over \$1,000 or contractor will not be able to bill for it in addition to the PMPM payment. These submissions will be billed as claims to Medicaid in accordance with the DVHA's Medicaid Provider Manual and billing instructions.

The following provisions specifying payments are:

1. No benefits or insurance will be reimbursed by the State.
  2. The total maximum amount payable under this contract shall not exceed \$26,978,491.60
  3. Payments for the period of January 1, 2017 to December 31, 2017 shall not exceed \$13,489,245.80.
  4. Payments for the period of January 1, 2018 to December 31, 2018 shall not exceed \$13,489,245.80.
- A. DVHA will pay the Contractor on a Per Member, Per Month (PMPM) basis to deliver transportation services to eligible members.
- B. In addition to the PMPW payment, the Contractor will be allowed to bill Medicaid for any complete trip that costs more than \$1,000 (round trip, including lodging and other expenses). Each trip will be billed as claims to Medicaid in accordance with DVHA's NEMT Provider Manual and billing instructions. All claims and invoices should be submitted within 30 days of date of service to comply with the set PMPM payment methodology.
- C. DVHA developed this PMPM payment model as an incentive to the Contractor for efficient and cost-effective performance. DVHA's PMPM dollar amount was developed by analyzing utilization and performance data from previous years. Because these prior-year conditions may change, DVHA agrees to negotiate in good faith to modify this contract whenever:
1. The Contractor can demonstrate that a change in utilization or other conditions will have a financial impact of more than \$10,000 AND one of the following statements (2 through 5 below) is also true.
  2. The Contractor experiences a change in the number and/or cost of rides delivered per member, per month.
  3. Fuel prices change by more than 15%. Fuel prices will be based on U.S. Energy Information Administration data for New England (Area PADD 1A). A fuel price baseline (for both all grade average and on-highway diesel) will be set at the onset of this contract term.

4. There is a change in the IRS mileage rate for personal vehicles.
5. There is any other change in costs that are clearly out of the direct control of the Contractor.

Contractor must maintain complete documentation and submit claims for all rides provided to members. Contractor will be ineligible to negotiate a higher PMPM unless all documentation of trips, all prior authorizations, and all supporting documentation is accounted for and/or provided to the State upon request. Under no circumstances will the State negotiate a higher PMPM due to deficiencies in the Contractor's performance.

- D. The Contractor will submit claims to Medicaid for all direct transportation services provided to our members. These claims will be "paid" by our claims adjudication system with a zero dollar amount. The data submitted in these claims will be used to generate the weekly payment described below. In order to make timely payments to the Contractor, the State will make the PMPM payments in weekly installments. These weekly payments will be based on a Per Member, Per Week (PMPW) basis. The following formula will be used to convert the PMPM to a PMPW for the purpose of making weekly payments to the Contractor:  $(PMPM \times 12)/52$ .
- E. 1) The Contractor's PMPW rate is: \$28.85 except as noted below.
- 2) DVHA and Contractor anticipate a transition period from individual provider contracts to the current Broker/Provider model. During the transition period, which shall be in effect from January 1, 2017 until no later than June 30, 2017, the State agrees to pay the Broker for Provider services based on each Providers' previous NEMT Contract during the transition period as follows:
1. Addison County Transit Resources (ACTR) PMPW rate will be \$40.04,
  2. Chittenden Country Transportation Authority (CCTA), d/b/a Green Mountain Transit Agency (GMTA) PMPW rate will be \$21.68,
  3. Green Mountain Community Network (GMCN) PMPW rate will be \$25.58,
  4. Marble Valley Transit District (MVTD) PMPW rate will be \$21.81,
  5. Rural Community Transportation, Inc. (RCT) PMPW will be \$31.80,
  6. Southeast Vermont Transit, Inc. d/b/a The Current (SEVT) PMPW rate will be \$35.96,
  7. Special Services Transportation Agency (SSTA) PMPW rate will be \$26.50, and
  8. Stagecoach Transportation Services (Stagecoach) PMPW rate will \$36.91.
- 3) During this transition period, no requests for rate adjustments will be entertained by DVHA.
- 4) The weekly payments will be calculated using the following method:
1. Each week HPES will generate a report of the total number of unduplicated individuals served by the Contractor over the prior 395 days. The count will ignore the past thirty (30) day period.
  2. Using system edits, HPES will remove from that total number the individuals who have either lost their benefits or have passed away during that time period.
  3. HPES will multiply the number of unique recipients by the PMPW dollar amount and make the payment during the following week's electronic payment to the Contractor's bank account.
  4. HPES will send weekly Remittance Advice documents to the Contractor.
  5. In the event that the weekly payment cannot happen due to data or processing errors, HPES will send the payment in the following week. DVHA agrees that these payments will be made on a weekly basis, but it will not be considered a breach of this contract if HPES is forced to postpone a payment for one week due to a data or processing error.

**The State will not pay any costs which are not specifically outlined in this contract or the DVHA NEMT Manual.**

5) PERFORMANCE STANDARDS

After the Transition Period, Contractor agrees to the following discounts in any instance where minimum standards are not met:

- a. Reporting: The Contractor must meet and document all of the minimum standards for financial and informational reports as defined in Attachment A, Section 4 and 5. In the event the Contractor fails to meet the foregoing performance standards, the Contractor shall award the State a discount for providing service levels which are not consistent with the Contractor's obligations as set forth herein and may be assessed at one percent (1%) withhold from the average PMPW for each standard that is not met.
- b. Service: In the event the Contractor fails to meet minimum service performance standards as defined in Attachment A, Section 4 and 5 the Contractor shall award the State a discount for providing service levels which are not consistent with the Contractor's obligations as set forth herein and may be assessed at one percent (1%) withhold from the average PMPW for each standard that is not met.

In addition to the withholds described above, the State may take action in response to a breach in the material terms of this contract following a reasonable cure period as described in paragraph c below, up to and including temporary withholding of some or all payment or cancellation of this agreement. Material breach includes the Contractor's failure to report or cooperate with the State in response to a situation resulting in or likely to result in a significant and unreasonable negative impact on a member or on the program.

- c. Cure: In the event the Contractor fails to meet reporting and/or service performance standards as referenced above, DVHA will send written notification and designate a period of time, not to be less than ten (10) business days, in which the Contractor must provide a written response to the notification. Such response may include a corrective action plan which, among other things, will propose a cure period. DVHA shall review the response and either reject or accept the corrective action plan. If rejected, Contractor will propose a modified corrective action plan based on feedback from DVHA. Once the corrective action plan has been accepted by DVHA, Contractor will be afforded a reasonable cure implementation period, not less than twenty (20) business days, during which time the Contractor may remedy the issue and return to compliance. Should the Contractor fail to remedy the issue, DVHA may notify the Contractor of its intent to assess the payment discount and the amount and date of the payment discount. All payment discounts will be deducted from the Contractor's payments as outlined above.

**ATTACHMENT C: STANDARD STATE PROVISIONS  
FOR CONTRACTS AND GRANTS  
REVISED JULY 1, 2016**

**1. Definitions:** For purposes of this Attachment, "Party" shall mean the Contractor, Grantee or Subrecipient, with whom the State of Vermont is executing this Agreement and consistent with the form of the Agreement. "Agreement" shall mean the specific contract or grant to which this form is attached.

**2. Entire Agreement:** This Agreement, whether in the form of a Contract, State Funded Grant, or Federally Funded Grant, represents the entire agreement between the parties on the subject matter. All prior agreements, representations, statements, negotiations, and understandings shall have no effect.

**3. Governing Law, Jurisdiction and Venue; No Waiver of Jury Trial:** This Agreement will be governed by the laws of the State of Vermont. Any action or proceeding brought by either the State or the Party in connection with this Agreement shall be brought and enforced in the Superior Court of the State of Vermont, Civil Division, Washington Unit. The Party irrevocably submits to the jurisdiction of this court for any action or proceeding regarding this Agreement. The Party agrees that it must first exhaust any applicable administrative remedies with respect to any cause of action that it may have against the State with regard to its performance under the Agreement.

Party agrees that the State shall not be required to submit to binding arbitration or waive its right to a jury trial.

**4. Sovereign Immunity:** The State reserves all immunities, defenses, rights or actions arising out of the State's sovereign status or under the Eleventh Amendment to the United States Constitution. No waiver of the State's immunities, defenses, rights or actions shall be implied or otherwise deemed to exist by reason of the State's entry into this Agreement.

**5. No Employee Benefits For Party:** The Party understands that the State will not provide any individual retirement benefits, group life insurance, group health and dental insurance, vacation or sick leave, workers compensation or other benefits or services available to State employees, nor will the state withhold any state or federal taxes except as required under applicable tax laws, which shall be determined in advance of execution of the Agreement. The Party understands that all tax returns required by the Internal Revenue Code and the State of Vermont, including but not limited to income, withholding, sales and use, and rooms and meals, must be filed by the Party, and information as to Agreement income will be provided by the State of Vermont to the Internal Revenue Service and the Vermont Department of Taxes.

**6. Independence:** The Party will act in an independent capacity and not as officers or employees of the State.

**7. Defense and Indemnity:** The Party shall defend the State and its officers and employees against all third party claims or suits arising in whole or in part from any act or omission of the Party or of any agent of the Party in connection with the performance of this Agreement. The State shall notify the Party in the event of any such claim or suit, and the Party shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit. The State retains the right to participate at its own expense in the defense of any claim. The State shall have the right to approve all proposed settlements of such claims or suits. In the event the State withholds approval to settle any such claim, then the Party shall proceed with the defense of the claim but under those circumstances, the Party's indemnification obligations shall be limited to the amount of the proposed settlement initially rejected by the State.

After a final judgment or settlement the Party may request recoupment of specific defense costs and may file suit in Washington Superior Court requesting recoupment. The Party shall be entitled to recoup costs only upon

a showing that such costs were entirely unrelated to the defense of any claim arising from an act or omission of the Party in connection with the performance of this Agreement.

The Party shall indemnify the State and its officers and employees in the event that the State, its officers or employees become legally obligated to pay any damages or losses arising from any act or omission of the Party or an agent of the Party in connection with the performance of this Agreement.

The Party agrees that in no event shall the terms of this Agreement nor any document required by the Party in connection with its performance under this Agreement obligate the State to defend or indemnify the Party or otherwise be liable for the expenses or reimbursement, including attorneys' fees, collection costs or other costs of the Party except to the extent awarded by a court of competent jurisdiction.

**8. Insurance:** Before commencing work on this Agreement the Party must provide certificates of insurance to show that the following minimum coverages are in effect. It is the responsibility of the Party to maintain current certificates of insurance on file with the State through the term of the Agreement. No warranty is made that the coverages and limits listed herein are adequate to cover and protect the interests of the Party for the Party's operations. These are solely minimums that have been established to protect the interests of the State.

*Workers Compensation:* With respect to all operations performed, the Party shall carry workers' compensation insurance in accordance with the laws of the State of Vermont. Vermont will accept an out-of-state employer's workers' compensation coverage while operating in Vermont provided that the insurance carrier is licensed to write insurance in Vermont and an amendatory endorsement is added to the policy adding Vermont for coverage purposes. Otherwise, the party shall secure a Vermont workers' compensation policy, if necessary to comply with Vermont law.

*General Liability and Property Damage:* With respect to all operations performed under this Agreement, the Party shall carry general liability insurance having all major divisions of coverage including, but not limited to:

Premises - Operations

Products and Completed Operations

Personal Injury Liability

Contractual Liability

The policy shall be on an occurrence form and limits shall not be less than:

\$1,000,000 Each Occurrence

\$2,000,000 General Aggregate

\$1,000,000 Products/Completed Operations Aggregate

\$1,000,000 Personal & Advertising Injury

*Automotive Liability:* The Party shall carry automotive liability insurance covering all motor vehicles, including hired and non-owned coverage, used in connection with the Agreement. Limits of coverage shall not be less than \$500,000 combined single limit. If performance of this Agreement involves construction, or the transport of persons or hazardous materials, limits of coverage shall not be less than \$1,000,000 combined single limit.

*Additional Insured.* The General Liability and Property Damage coverages required for performance of this Agreement shall include the State of Vermont and its agencies, departments, officers and employees as Additional Insureds. If performance of this Agreement involves construction, or the transport of persons or hazardous materials, then the required Automotive Liability coverage shall include the State of Vermont and its agencies, departments, officers and employees as Additional Insureds. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

*Notice of Cancellation or Change.* There shall be no cancellation, change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) days written prior written notice to the State.

**9. Reliance by the State on Representations:** All payments by the State under this Agreement will be made in reliance upon the accuracy of all representations made by the Party in accordance with the Contract, including but not limited to bills, invoices, progress reports and other proofs of work.

**10. False Claims Act:** The Party acknowledges that it is subject to the Vermont False Claims Act as set forth in 32 V.S.A. § 630 *et seq.* If the Party violates the Vermont False Claims Act it shall be liable to the State for civil penalties, treble damages and the costs of the investigation and prosecution of such violation, including attorney's fees, except as the same may be reduced by a court of competent jurisdiction. The Party's liability to the State under the False Claims Act shall not be limited notwithstanding any agreement of the State to otherwise limit Party's liability.

**11. Whistleblower Protections:** The Party shall not discriminate or retaliate against one of its employees or agents for disclosing information concerning a violation of law, fraud, waste, abuse of authority or acts threatening health or safety, including but not limited to allegations concerning the False Claims Act. Further, the Party shall not require such employees or agents to forego monetary awards as a result of such disclosures, nor should they be required to report misconduct to the Party or its agents prior to reporting to any governmental entity and/or the public.

**12. Federal Requirements Pertaining to Grants and Subrecipient Agreements:**

**A. Requirement to Have a Single Audit:** In the case that this Agreement is a Grant that is funded in whole or in part by federal funds, the Subrecipient will complete the Subrecipient Annual Report annually within 45 days after its fiscal year end, informing the State of Vermont whether or not a Single Audit is required for the prior fiscal year. If a Single Audit is required, the Subrecipient will submit a copy of the audit report to the granting Party within 9 months. If a single audit is not required, only the Subrecipient Annual Report is required.

For fiscal years ending before December 25, 2015, a Single Audit is required if the subrecipient expends \$500,000 or more in federal assistance during its fiscal year and must be conducted in accordance with OMB Circular A-133. For fiscal years ending on or after December 25, 2015, a Single Audit is required if the subrecipient expends \$750,000 or more in federal assistance during its fiscal year and must be conducted in accordance with 2 CFR Chapter I, Chapter II, Part 200, Subpart F. The Subrecipient Annual Report is required to be submitted within 45 days, whether or not a Single Audit is required.

**B. Internal Controls:** In the case that this Agreement is a Grant that is funded in whole or in part by Federal funds, in accordance with 2 CFR Part II, §200.303, the Party must establish and maintain effective internal control over the Federal award to provide reasonable assurance that the Party is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the award. These internal controls should be in compliance with guidance in "Standards for Internal Control in the Federal Government" issued by the Comptroller General of the United States and the "Internal Control Integrated Framework", issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

**C. Mandatory Disclosures:** In the case that this Agreement is a Grant funded in whole or in part by Federal funds, in accordance with 2CFR Part II, §200.113, Party must disclose, in a timely manner, in writing to the State, all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures may result in the imposition of sanctions which may include disallowance of costs incurred, withholding of payments, termination of the Agreement, suspension/debarment, etc.

**13. Records Available for Audit:** The Party shall maintain all records pertaining to performance under this agreement. "Records" means any written or recorded information, regardless of physical form or characteristics, which is produced or acquired by the Party in the performance of this agreement. Records produced or acquired in a machine readable electronic format shall be maintained in that format. The records described shall be made available at reasonable times during the period of the Agreement and for three years thereafter or for any period required by law for inspection by any authorized representatives of the State or Federal Government. If any litigation, claim, or audit is started before the expiration of the three-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.

**14. Fair Employment Practices and Americans with Disabilities Act:** Party agrees to comply with the requirement of 21 V.S.A. Chapter 5, Subchapter 6, relating to fair employment practices, to the full extent applicable. Party shall also ensure, to the full extent required by the Americans with Disabilities Act of 1990, as amended, that qualified individuals with disabilities receive equitable access to the services, programs, and activities provided by the Party under this Agreement.

**15. Set Off:** The State may set off any sums which the Party owes the State against any sums due the Party under this Agreement; provided, however, that any set off of amounts due the State of Vermont as taxes shall be in accordance with the procedures more specifically provided hereinafter.

**16. Taxes Due to the State:**

- A. Party understands and acknowledges responsibility, if applicable, for compliance with State tax laws, including income tax withholding for employees performing services within the State, payment of use tax on property used within the State, corporate and/or personal income tax on income earned within the State.
- B. Party certifies under the pains and penalties of perjury that, as of the date the Agreement is signed, the Party is in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Vermont.
- C. Party understands that final payment under this Agreement may be withheld if the Commissioner of Taxes determines that the Party is not in good standing with respect to or in full compliance with a plan to pay any and all taxes due to the State of Vermont.
- D. Party also understands the State may set off taxes (and related penalties, interest and fees) due to the State of Vermont, but only if the Party has failed to make an appeal within the time allowed by law, or an appeal has been taken and finally determined and the Party has no further legal recourse to contest the amounts due.

**17. Taxation of Purchases:** All State purchases must be invoiced tax free. An exemption certificate will be furnished upon request with respect to otherwise taxable items.

**18. Child Support:** (Only applicable if the Party is a natural person, not a corporation or partnership.) Party states that, as of the date the Agreement is signed, he/she:

- A. is not under any obligation to pay child support; or
- B. is under such an obligation and is in good standing with respect to that obligation; or
- C. has agreed to a payment plan with the Vermont Office of Child Support Services and is in full compliance with that plan.

Party makes this statement with regard to support owed to any and all children residing in Vermont. In addition, if the Party is a resident of Vermont, Party makes this statement with regard to support owed to any and all children residing in any other state or territory of the United States.



**19. Sub-Agreements:** Party shall not assign, subcontract or subgrant the performance of this Agreement or any portion thereof to any other Party without the prior written approval of the State. Party shall be responsible and liable to the State for all acts or omissions of subcontractors and any other person performing work under this Agreement pursuant to an agreement with Party or any subcontractor.

In the case this Agreement is a contract with a total cost in excess of \$250,000, the Party shall provide to the State a list of all proposed subcontractors and subcontractors' subcontractors, together with the identity of those subcontractors' workers compensation insurance providers, and additional required or requested information, as applicable, in accordance with Section 32 of The Vermont Recovery and Reinvestment Act of 2009 (Act No. 54).

Party shall include the following provisions of this Attachment C in all subcontracts for work performed solely for the State of Vermont and subcontracts for work performed in the State of Vermont: Section 10 ("False Claims Act"); Section 11 ("Whistleblower Protections"); Section 14 ("Fair Employment Practices and Americans with Disabilities Act"); Section 16 ("Taxes Due the State"); Section 18 ("Child Support"); Section 20 ("No Gifts or Gratuities"); Section 22 ("Certification Regarding Debarment"); Section 23 ("Certification Regarding Use of State Funds"); Section 31 ("State Facilities"); and Section 32 ("Location of State Data").

**20. No Gifts or Gratuities:** Party shall not give title or possession of anything of substantial value (including property, currency, travel and/or education programs) to any officer or employee of the State during the term of this Agreement.

**21. Copies:** Party shall use reasonable best efforts to ensure that all written reports prepared under this Agreement are printed using both sides of the paper.

**22. Certification Regarding Debarment:** Party certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, neither Party nor Party's principals (officers, directors, owners, or partners) are presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in federal programs, or programs supported in whole or in part by federal funds.

Party further certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, Party is not presently debarred, suspended, nor named on the State's debarment list at: <http://bgs.vermont.gov/purchasing/debarment>

**23. Certification Regarding Use of State Funds:** In the case that Party is an employer and this Agreement is a State Funded Grant in excess of \$1,001, Party certifies that none of these State funds will be used to interfere with or restrain the exercise of Party's employee's rights with respect to unionization.

**24. Conflict of Interest:** Party shall fully disclose, in writing, any conflicts of interest or potential conflicts of interest.

**25. Confidentiality:** Party acknowledges and agrees that this Agreement and any and all information obtained by the State from the Party in connection with this Agreement are subject to the State of Vermont Access to Public Records Act, 1 V.S.A. § 315 et seq.

**26. Force Majeure:** Neither the State nor the Party shall be liable to the other for any failure or delay of performance of any obligations under this Agreement to the extent such failure or delay shall have been wholly or principally caused by acts or events beyond its reasonable control rendering performance illegal or impossible (excluding strikes or lock-outs) ("Force Majeure"). Where Force Majeure is asserted, the nonperforming party must prove that it made all reasonable efforts to remove, eliminate or minimize such cause of delay or damages, diligently pursued performance of its obligations under this Agreement, substantially fulfilled all non-excused obligations, and timely notified the other party of the likelihood or actual occurrence of

an event described in this paragraph.

**27. Marketing:** Party shall not refer to the State in any publicity materials, information pamphlets, press releases, research reports, advertising, sales promotions, trade shows, or marketing materials or similar communications to third parties except with the prior written consent of the State.

**28. Termination:** In addition to any right of the State to terminate for convenience, the State may terminate this Agreement as follows:

- A. Non-Appropriation:** If this Agreement extends into more than one fiscal year of the State (July 1 to June 30), and if appropriations are insufficient to support this Agreement, the State may cancel at the end of the fiscal year, or otherwise upon the expiration of existing appropriation authority. In the case that this Agreement is a Grant that is funded in whole or in part by federal funds, and in the event federal funds become unavailable or reduced, the State may suspend or cancel this Grant immediately, and the State shall have no obligation to pay Subrecipient from State revenues.
- B. Termination for Cause:** Either party may terminate this Agreement if a party materially breaches its obligations under this Agreement, and such breach is not cured within thirty (30) days after delivery of the non-breaching party's notice or such longer time as the non-breaching party may specify in the notice.
- C. No Implied Waiver of Remedies:** A party's delay or failure to exercise any right, power or remedy under this Agreement shall not impair any such right, power or remedy, or be construed as a waiver of any such right, power or remedy. All waivers must be in writing.

**29. Continuity of Performance:** In the event of a dispute between the Party and the State, each party will continue to perform its obligations under this Agreement during the resolution of the dispute until this Agreement is terminated in accordance with its terms.

**30. Termination Assistance:** Upon nearing the end of the final term or termination of this Agreement, without respect to cause, the Party shall take all reasonable and prudent measures to facilitate any transition required by the State. All State property, tangible and intangible, shall be returned to the State upon demand at no additional cost to the State in a format acceptable to the State.

**31. State Facilities:** If the State makes space available to the Party in any State facility during the term of this Agreement for purposes of the Party's performance under this Agreement, the Party shall only use the space in accordance with all policies and procedures governing access to and use of State facilities which shall be made available upon request. State facilities will be made available to Party on an "AS IS, WHERE IS" basis, with no warranties whatsoever.

**32. Location of State Data:** No State data received, obtained, or generated by the Party in connection with performance under this Agreement shall be processed, transmitted, stored, or transferred by any means outside continental United States, except with the express written permission of the State.

(Revised 7/1/16 - End of Standard Provisions)

**ATTACHMENT E  
BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement (“Agreement”) is entered into by and between the State of Vermont Agency of Human Services, operating by and through its Department of Vermont Health Access (“Covered Entity”) and Vermont Public Transportation Association (“Business Associate”) as of December 31, 2016 (“Effective Date”). This Agreement supplements and is made a part of the contract/grant to which it is attached.

Covered Entity and Business Associate enter into this Agreement to comply with standards promulgated under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), including the Standards for the Privacy of Individually Identifiable Health Information, at 45 CFR Parts 160 and 164 (“Privacy Rule”), and the Security Standards, at 45 CFR Parts 160 and 164 (“Security Rule”), as amended by Subtitle D of the Health Information Technology for Economic and Clinical Health Act (HITECH), and any associated federal rules and regulations.

The parties agree as follows:

**1. Definitions.** All capitalized terms used but not otherwise defined in this Agreement have the meanings set forth in 45 CFR Parts 160 and 164 as amended by HITECH and associated federal rules and regulations.

“Agent” means those person(s) who are agents(s) of the Business Associate, in accordance with the Federal common law of agency, as referenced in 45 CFR § 160.402(c).

“Breach” means the acquisition, access, use or disclosure of protected health information (PHI) which compromises the security or privacy of the PHI, except as excluded in the definition of Breach in 45 CFR § 164.402.

“Business Associate shall have the meaning given in 45 CFR § 160.103.

“Individual” includes a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).

“Protected Health Information” or PHI shall have the meaning given in 45 CFR § 160.103, limited to the information created or received by Business Associate from or on behalf of Agency.

“Security Incident” means any known successful or unsuccessful attempt by an authorized or unauthorized individual to inappropriately use, disclose, modify, access, or destroy any information or interference with system operations in an information system.

“Services” includes all work performed by the Business Associate for or on behalf of Covered Entity that requires the use and/or disclosure of protected health information to perform a business associate function described in 45 CFR § 160.103 under the definition of Business Associate.

“Subcontractor” means a person or organization to whom a Business Associate delegates a function, activity or service, other than in the capacity of a member of the workforce of the Business Associate. For purposes of this Agreement, the term Subcontractor includes Subgrantees.

**2. Identification and Disclosure of Privacy and Security Offices.** Business Associate and Subcontractors shall provide, within ten (10) days of the execution of this agreement, written notice to the Covered Entity’s contract/grant manager the names and contact information of both the HIPAA Privacy Officer

and HIPAA Security Officer. This information must be updated any time either of these contacts changes.

**3. Permitted and Required Uses/Disclosures of PHI.**

3.1 Except as limited in this Agreement, Business Associate may use or disclose PHI to perform Services, as specified in the underlying grant or contract with Covered Entity. The uses and disclosures of Business Associate are limited to the minimum necessary, to complete the tasks or to provide the services associated with the terms of the underlying agreement. Business Associate shall not use or disclose PHI in any manner that would constitute a violation of the Privacy Rule if used or disclosed by Covered Entity in that manner. Business Associate may not use or disclose PHI other than as permitted or required by this Agreement or as Required by Law.

3.2 Business Associate may make PHI available to its employees who need access to perform Services provided that Business Associate makes such employees aware of the use and disclosure restrictions in this Agreement and binds them to comply with such restrictions. Business Associate may only disclose PHI for the purposes authorized by this Agreement: (a) to its agents and Subcontractors in accordance with Sections 9 and 17 or, (b) as otherwise permitted by Section 3.

3.3 Business Associate shall be directly liable under HIPAA for impermissible uses and disclosures of the PHI it handles on behalf of Covered Entity, and for impermissible uses and disclosures, by Business Associate's Subcontractor(s), of the PHI that Business Associate handles on behalf of Covered Entity and that it passes on to Subcontractors.

**4. Business Activities.** Business Associate may use PHI received in its capacity as a Business Associate to Covered Entity if necessary for Business Associate's proper management and administration or to carry out its legal responsibilities. Business Associate may disclose PHI received in its capacity as Business Associate to Covered Entity for Business Associate's proper management and administration or to carry out its legal responsibilities if a disclosure is Required by Law or if Business Associate obtains reasonable written assurances via a written agreement from the person to whom the information is to be disclosed that the PHI shall remain confidential and be used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the Agreement requires the person or entity to notify Business Associate, within two (2) business days (who in turn will notify Covered Entity within two (2) business days after receiving notice of a Breach as specified in Section 6.1), in writing of any Breach of Unsecured PHI of which it is aware. Uses and disclosures of PHI for the purposes identified in Section 3 must be of the minimum amount of PHI necessary to accomplish such purposes.

**5. Safeguards.** Business Associate, its Agent(s) and Subcontractor(s) shall implement and use appropriate safeguards to prevent the use or disclosure of PHI other than as provided for by this Agreement. With respect to any PHI that is maintained in or transmitted by electronic media, Business Associate or its Subcontractor(s) shall comply with 45 CFR sections 164.308 (administrative safeguards), 164.310 (physical safeguards), 164.312 (technical safeguards) and 164.316 (policies and procedures and documentation requirements). Business Associate or its Agent(s) and Subcontractor(s) shall identify in writing upon request from Covered Entity all of the safeguards that it uses to prevent impermissible uses or disclosures of PHI.

**6. Documenting and Reporting Breaches.**

6.1 Business Associate shall report to Covered Entity any Breach of Unsecured PHI, including Breaches reported to it by a Subcontractor, as soon as it (or any of its employees or agents) becomes aware of any such Breach, and in no case later than two (2) business days after it (or any of its

employees or agents) becomes aware of the Breach, except when a law enforcement official determines that a notification would impede a criminal investigation or cause damage to national security.

6.2 Business Associate shall provide Covered Entity with the names of the individuals whose Unsecured PHI has been, or is reasonably believed to have been, the subject of the Breach and any other available information that is required to be given to the affected individuals, as set forth in 45 CFR § 164.404(c), and, if requested by Covered Entity, information necessary for Covered Entity to investigate the impermissible use or disclosure. Business Associate shall continue to provide to Covered Entity information concerning the Breach as it becomes available to it. Business Associate shall require its Subcontractor(s) to agree to these same terms and conditions.

6.3 When Business Associate determines that an impermissible acquisition, use or disclosure of PHI by a member of its workforce is not a Breach, as that term is defined in 45 CFR § 164.402, and therefore does not necessitate notice to the impacted individual(s), it shall document its assessment of risk, conducted as set forth in 45 CFR § 402(2). When requested by Covered Entity, Business Associate shall make its risk assessments available to Covered Entity. It shall also provide Covered Entity with 1) the name of the person(s) making the assessment, 2) a brief summary of the facts, and 3) a brief statement of the reasons supporting the determination of low probability that the PHI had been compromised. When a breach is the responsibility of a member of its Subcontractor's workforce, Business Associate shall either 1) conduct its own risk assessment and draft a summary of the event and assessment or 2) require its Subcontractor to conduct the assessment and draft a summary of the event. In either case, Business Associate shall make these assessments and reports available to Covered Entity.

6.4 Business Associate shall require, by contract, a Subcontractor to report to Business Associate and Covered Entity any Breach of which the Subcontractor becomes aware, no later than two (2) business days after becomes aware of the Breach.

7. **Mitigation and Corrective Action.** Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to it of an impermissible use or disclosure of PHI, even if the impermissible use or disclosure does not constitute a Breach. Business Associate shall draft and carry out a plan of corrective action to address any incident of impermissible use or disclosure of PHI. If requested by Covered Entity, Business Associate shall make its mitigation and corrective action plans available to Covered Entity. Business Associate shall require a Subcontractor to agree to these same terms and conditions.

8. **Providing Notice of Breaches.**

8.1 If Covered Entity determines that an impermissible acquisition, access, use or disclosure of PHI for which one of Business Associate's employees or agents was responsible constitutes a Breach as defined in 45 CFR § 164.402, and if requested by Covered Entity, Business Associate shall provide notice to the individual(s) whose PHI has been the subject of the Breach. When requested to provide notice, Business Associate shall consult with Covered Entity about the timeliness, content and method of notice, and shall receive Covered Entity's approval concerning these elements. The cost of notice and related remedies shall be borne by Business Associate.

8.2 If Covered Entity or Business Associate determines that an impermissible acquisition, access, use or disclosure of PHI by a Subcontractor of Business Associate constitutes a Breach as defined in 45 CFR § 164.402, and if requested by Covered Entity or Business Associate, Subcontractor shall provide notice to the individual(s) whose PHI has been the subject of the Breach. When Covered Entity requests that Business Associate or its Subcontractor provide notice, Business Associate shall either 1) consult with Covered Entity about the specifics of the notice as set forth in section 8.1, above, or 2) require, by

contract, its Subcontractor to consult with Covered Entity about the specifics of the notice as set forth in section 8.1

8.3 The notice to affected individuals shall be provided as soon as reasonably possible and in no case later than 60 calendar days after Business Associate reported the Breach to Covered Entity.

8.4 The notice to affected individuals shall be written in plain language and shall include, to the extent possible, 1) a brief description of what happened, 2) a description of the types of Unsecured PHI that were involved in the Breach, 3) any steps individuals can take to protect themselves from potential harm resulting from the Breach, 4) a brief description of what the Business Associate is doing to investigate the Breach, to mitigate harm to individuals and to protect against further Breaches, and 5) contact procedures for individuals to ask questions or obtain additional information, as set forth in 45 CFR § 164.404(c).

8.5 Business Associate shall notify individuals of Breaches as specified in 45 CFR § 164.404(d) (methods of individual notice). In addition, when a Breach involves more than 500 residents of Vermont, Business Associate shall, if requested by Covered Entity, notify prominent media outlets serving Vermont, following the requirements set forth in 45 CFR § 164.406.

**9. Agreements with Subcontractors.** Business Associate shall enter into a Business Associate Agreement with any Subcontractor to whom it provides PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity in which the Subcontractor agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such PHI. Business Associate must enter into this Business Associate Agreement before any use by or disclosure of PHI to such agent. The written agreement must identify Covered Entity as a direct and intended third party beneficiary with the right to enforce any breach of the agreement concerning the use or disclosure of PHI. Business Associate shall provide a copy of the Business Associate Agreement it enters into with a subcontractor to Covered Entity upon request. Business associate may not make any disclosure of PHI to any Subcontractor without prior written consent of Covered Entity.

**10. Access to PHI.** Business Associate shall provide access to PHI in a Designated Record Set to Covered Entity or as directed by Covered Entity to an Individual to meet the requirements under 45 CFR § 164.524. Business Associate shall provide such access in the time and manner reasonably designated by Covered Entity. Within three (3) business days, Business Associate shall forward to Covered Entity for handling any request for access to PHI that Business Associate directly receives from an Individual.

**11. Amendment of PHI.** Business Associate shall make any amendments to PHI in a Designated Record Set that Covered Entity directs or agrees to pursuant to 45 CFR § 164.526, whether at the request of Covered Entity or an Individual. Business Associate shall make such amendments in the time and manner reasonably designated by Covered Entity. Within three (3) business days, Business Associate shall forward to Covered Entity for handling any request for amendment to PHI that Business Associate directly receives from an Individual.

**12. Accounting of Disclosures.** Business Associate shall document disclosures of PHI and all information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528. Business Associate shall provide such information to Covered Entity or as directed by Covered Entity to an Individual, to permit Covered Entity to respond to an accounting request. Business Associate shall provide such information in the time and manner reasonably designated by Covered Entity. Within three (3) business days, Business Associate shall forward to Covered Entity for handling any accounting request that Business Associate directly receives from an

Individual.

**13. Books and Records.** Subject to the attorney-client and other applicable legal privileges, Business Associate shall make its internal practices, books, and records (including policies and procedures and PHI) relating to the use and disclosure of PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity available to the Secretary in the time and manner designated by the Secretary. Business Associate shall make the same information available to Covered Entity, upon Covered Entity's request, in the time and manner reasonably designated by Covered Entity so that Covered Entity may determine whether Business Associate is in compliance with this Agreement.

**14. Termination.**

14.1 This Agreement commences on the Effective Date and shall remain in effect until terminated by Covered Entity or until all of the PHI provided by Covered Entity to Business Associate or created or received by Business Associate on behalf of Covered Entity is destroyed or returned to Covered Entity subject to Section 18.8.

14.2 If Business Associate breaches any material term of this Agreement, Covered Entity may either: (a) provide an opportunity for Business Associate to cure the breach and Covered Entity may terminate the contract or grant without liability or penalty if Business Associate does not cure the breach within the time specified by Covered Entity; or (b) immediately terminate the contract or grant without liability or penalty if Covered Entity believes that cure is not reasonably possible; or (c) if neither termination nor cure are feasible, Covered Entity shall report the breach to the Secretary. Covered Entity has the right to seek to cure any breach by Business Associate and this right, regardless of whether Covered Entity cures such breach, does not lessen any right or remedy available to Covered Entity at law, in equity, or under the contract or grant, nor does it lessen Business Associate's responsibility for such breach or its duty to cure such breach.

**15. Return/Destruction of PHI.**

15.1 Business Associate in connection with the expiration or termination of the contract or grant shall return or destroy, at the discretion of the Covered Entity, all PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity pursuant to this contract or grant that Business Associate still maintains in any form or medium (including electronic) within thirty (30) days after such expiration or termination. Business Associate shall not retain any copies of the PHI. Business Associate shall certify in writing for Covered Entity (1) when all PHI has been returned or destroyed and (2) that Business Associate does not continue to maintain any PHI. Business Associate is to provide this certification during this thirty (30) day period.

15.2 Business Associate shall provide to Covered Entity notification of any conditions that Business Associate believes make the return or destruction of PHI infeasible. If Covered Entity agrees that return or destruction is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible for so long as Business Associate maintains such PHI. This shall also apply to all Agents and Subcontractors of Business Associate.

**16. Penalties and Training.** Business Associate understands that: (a) there may be civil or criminal penalties for misuse or misappropriation of PHI and (b) violations of this Agreement may result in notification by Covered Entity to law enforcement officials and regulatory, accreditation, and licensure organizations. If requested by Covered Entity, Business Associate shall participate in training regarding the use, confidentiality,

and security of PHI.

**17. Security Rule Obligations.** The following provisions of this section apply to the extent that Business Associate creates, receives, maintains or transmits Electronic PHI on behalf of Covered Entity.

17.1 Business Associate shall implement and use administrative, physical, and technical safeguards in compliance with 45 CFR sections 164.308, 164.310, and 164.312 with respect to the Electronic PHI that it creates, receives, maintains or transmits on behalf of Covered Entity. Business Associate shall identify in writing upon request from Covered Entity all of the safeguards that it uses to protect such Electronic PHI.

17.2 Business Associate shall ensure that any Agent and Subcontractor to whom it provides Electronic PHI agrees in a written agreement to implement and use administrative, physical, and technical safeguards that reasonably and appropriately protect the Confidentiality, Integrity and Availability of the Electronic PHI. Business Associate must enter into this written agreement before any use or disclosure of Electronic PHI by such Agent or Subcontractor. The written agreement must identify Covered Entity as a direct and intended third party beneficiary with the right to enforce any breach of the agreement concerning the use or disclosure of Electronic PHI. Business Associate shall provide a copy of the written agreement to Covered Entity upon request. Business Associate may not make any disclosure of Electronic PHI to any Agent or Subcontractor without the prior written consent of Covered Entity.

17.3 Business Associate shall report in writing to Covered Entity any Security Incident pertaining to such Electronic PHI (whether involving Business Associate or an Agent or Subcontractor). Business Associate shall provide this written report as soon as it becomes aware of any such Security Incident, and in no case later than two (2) business days after it becomes aware of the incident. Business Associate shall provide Covered Entity with the information necessary for Covered Entity to investigate any such Security Incident.

17.4 Business Associate shall comply with any reasonable policies and procedures Covered Entity implements to obtain compliance under the Security Rule.

**18. Miscellaneous.**

18.1 In the event of any conflict or inconsistency between the terms of this Agreement and the terms of the contract/grant, the terms of this Agreement shall govern with respect to its subject matter. Otherwise, the terms of the contract/grant continue in effect.

18.2 Business Associate shall cooperate with Covered Entity to amend this Agreement from time to time as is necessary for Covered Entity to comply with the Privacy Rule, the Security Rule, or any other standards promulgated under HIPAA.

18.3 Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy Rule, Security Rule, or any other standards promulgated under HIPAA.

18.4 In addition to applicable Vermont law, the parties shall rely on applicable federal law (e.g., HIPAA, the Privacy Rule and Security Rule, and the HIPAA omnibus final rule) in construing the meaning and effect of this Agreement.

18.5 As between Business Associate and Covered Entity, Covered Entity owns all PHI provided by



Covered Entity to Business Associate or created or received by Business Associate on behalf of Covered Entity.

18.6 Business Associate shall abide by the terms and conditions of this Agreement with respect to all PHI it receives from Covered Entity or creates or receives on behalf of Covered Entity even if some of that information relates to specific services for which Business Associate may not be a "Business Associate" of Covered Entity under the Privacy Rule.

18.7 Business Associate is prohibited from directly or indirectly receiving any remuneration in exchange for an individual's PHI. Business Associate will refrain from marketing activities that would violate HIPAA, including specifically Section 13406 of the HITECH Act. Reports or data containing the PHI may not be sold without Agency's or the affected individual's written consent.

18.8 The provisions of this Agreement that by their terms encompass continuing rights or responsibilities shall survive the expiration or termination of this Agreement. For example: (a) the provisions of this Agreement shall continue to apply if Covered Entity determines that it would be infeasible for Business Associate to return or destroy PHI as provided in Section 14.2 and (b) the obligation of Business Associate to provide an accounting of disclosures as set forth in Section 11 survives the expiration or termination of this Agreement with respect to accounting requests, if any, made after such expiration or termination.

(Rev: 5/5/15)

**ATTACHMENT F**  
**AGENCY OF HUMAN SERVICES' CUSTOMARY CONTRACT PROVISIONS**

1. **Agency of Human Services – Field Services Directors** will share oversight with the department (or field office) that is a party to the contract for provider performance using outcomes, processes, terms and conditions agreed to under this contract.
2. **2-1-1 Data Base:** The Contractor providing a health or human services within Vermont, or near the border that is readily accessible to residents of Vermont, will provide relevant descriptive information regarding its agency, programs and/or contact and will adhere to the "Inclusion/Exclusion" policy of Vermont's United Way/Vermont 211. If included, the Contractor will provide accurate and up to date information to their data base as needed. The "Inclusion/Exclusion" policy can be found at [www.vermont211.org](http://www.vermont211.org)

3. **Medicaid Program Contractors:**

Inspection of Records: Any contracts accessing payments for services through the Global Commitment to Health Waiver and Vermont Medicaid program must fulfill state and federal legal requirements to enable the Agency of Human Services (AHS), the United States Department of Health and Human Services (DHHS) and the Government Accounting Office (GAO) to:

Evaluate through inspection or other means the quality, appropriateness, and timeliness of services performed; and Inspect and audit any financial records of such Contractor or subcontractor.

Subcontracting for Medicaid Services: Having a subcontract does not terminate the Contractor, receiving funds under Vermont's Medicaid program, from its responsibility to ensure that all activities under this agreement are carried out. Subcontracts must specify the activities and reporting responsibilities of the Contractor or subcontractor and provide for revoking delegation or imposing other sanctions if the Contractor or subcontractor's performance is inadequate. The Contractor agrees to make available upon request to the Agency of Human Services; the Department of Vermont Health Access; the Department of Disabilities, Aging and Independent Living; and the Center for Medicare and Medicaid Services (CMS) all contracts and subcontracts between the Contractor and service providers.

Medicaid Notification of Termination Requirements: Any Contractor accessing payments for services under the Global Commitment to Health Waiver and Medicaid programs who terminates their practice will follow the Department of Vermont Health Access, Managed Care Organization enrollee notification requirements.

Encounter Data: Any Contractor accessing payments for services through the Global Commitment to Health Waiver and Vermont Medicaid programs must provide encounter data to the Agency of Human Services and/or its departments and ensure that it can be linked to enrollee eligibility files maintained by the State.

Federal Medicaid System Security Requirements Compliance: All contractors and subcontractors must provide a security plan, risk assessment, and security controls review document within three months of the start date of this agreement (and update it annually thereafter) to support audit compliance with 45CFR95.621 subpart F, *ADP (Automated Data Processing) System Security Requirements and Review Process*.

4. **Non-discrimination Based on National Origin as evidenced by Limited English Proficiency.** The Contractor agrees to comply with the non-discrimination requirements of Title VI of the Civil Rights Act of 1964, 42 USC Section 2000d, et seq., and with the federal guidelines promulgated pursuant to Executive Order 13166 of 2000, which require that contractors and subcontractors receiving federal funds must assure that persons with limited English proficiency can meaningfully access services. To the extent the Contractor provides assistance to individuals with limited English proficiency through the use of oral or written translation or interpretive services in compliance with this requirement, such individuals cannot be required to pay for such services.

5. **Voter Registration.** When designated by the Secretary of State, the Contractor agrees to become a voter registration agency as defined by 17 V.S.A. §2103 (41), and to comply with the requirements of state and federal law pertaining to such agencies.
6. **Drug Free Workplace Act.** The Contractor will assure a drug-free workplace in accordance with 45 CFR Part 76.

7. **Privacy and Security Standards.**

Protected Health Information: The Contractor shall maintain the privacy and security of all individually identifiable health information acquired by or provided to it as a part of the performance of this contract. The Contractor shall follow federal and state law relating to privacy and security of individually identifiable health information as applicable, including the Health Insurance Portability and Accountability Act (HIPAA) and its federal regulations.

Substance Abuse Treatment Information: The confidentiality of any alcohol and drug abuse treatment information acquired by or provided to the Contractor or subcontractor shall be maintained in compliance with any applicable state or federal laws or regulations and specifically set out in 42 CFR Part 2.

Other Confidential Consumer Information: The Contractor agrees to comply with the requirements of AHS Rule No. 08-048 concerning access to information. The Contractor agrees to comply with any applicable Vermont State Statute, including but not limited to 12 VSA §1612 and any applicable Board of Health confidentiality regulations. The Contractor shall ensure that all of its employees and subcontractors performing services under this agreement understand the sensitive nature of the information that they may have access to and sign an affirmation of understanding regarding the information's confidential and non-public nature.

Social Security numbers: The Contractor agrees to comply with all applicable Vermont State Statutes to assure protection and security of personal information, including protection from identity theft as outlined in Title 9, Vermont Statutes Annotated, Ch. 62.

8. **Abuse Registry.** The Contractor agrees not to employ any individual, use any volunteer, or otherwise provide reimbursement to any individual in the performance of services connected with this agreement, who provides care, custody, treatment, transportation, or supervision to children or vulnerable adults if there is a substantiation of abuse or neglect or exploitation against that individual. The Contractor will check the Adult Abuse Registry in the Department of Disabilities, Aging and Independent Living. Unless the Contractor holds a valid child care license or registration from the Division of Child Development, Department for Children and Families, the Contractor shall also check the Central Child Protection Registry. (See 33 V.S.A. §4919(a)(3) & 33 V.S.A. §6911(c)(3)).
9. **Reporting of Abuse, Neglect, or Exploitation.** Consistent with provisions of 33 V.S.A. §4913(a) and §6903, any agent or employee of a Contractor who, in the performance of services connected with this agreement, has contact with clients or is a caregiver and who has reasonable cause to believe that a child or vulnerable adult has been abused or neglected as defined in Chapter 49 or abused, neglected, or exploited as defined in Chapter 69 of Title 33 V.S.A. shall make a report involving children to the Commissioner of the Department for Children and Families within 24 hours or a report involving vulnerable adults to the Division of Licensing and Protection at the Department of Disabilities, Aging, and Independent Living within 48 hours. This requirement applies except in those instances where particular roles and functions are exempt from reporting under state and federal law. Reports involving children shall contain the information required by 33 V.S.A. §4914. Reports involving vulnerable adults shall contain the information required by 33 V.S.A. §6904. The Contractor will ensure that its agents or employees receive training on the reporting of abuse or neglect to children and abuse, neglect or exploitation of vulnerable adults.
10. **Intellectual Property/Work Product Ownership.** All data, technical information, materials first gathered, originated, developed, prepared, or obtained as a condition of this agreement and used in the performance of this agreement - including, but not limited to all reports, surveys, plans, charts, literature, brochures,

mailings, recordings (video or audio), pictures, drawings, analyses, graphic representations, software computer programs and accompanying documentation and printouts, notes and memoranda, written procedures and documents, which are prepared for or obtained specifically for this agreement - or are a result of the services required under this grant - shall be considered "work for hire" and remain the property of the State of Vermont, regardless of the state of completion - unless otherwise specified in this agreement. Such items shall be delivered to the State of Vermont upon 30 days notice by the State. With respect to software computer programs and / or source codes first developed for the State, all the work shall be considered "work for hire," i.e., the State, not the Contractor or subcontractor, shall have full and complete ownership of all software computer programs, documentation and/or source codes developed.

The Contractor shall not sell or copyright a work product or item produced under this agreement without explicit permission from the State.

If the Contractor is operating a system or application on behalf of the State of Vermont, then the Contractor shall not make information entered into the system or application available for uses by any other party than the State of Vermont, without prior authorization by the State. Nothing herein shall entitle the State to pre-existing Contractor's materials.

11. **Security and Data Transfers.** The State shall work with the Contractor to ensure compliance with all applicable State and Agency of Human Services' policies and standards, especially those related to privacy and security. The State will advise the Contractor of any new policies, procedures, or protocols developed during the term of this agreement as they are issued and will work with the Contractor to implement any required.

The Contractor will ensure the physical and data security associated with computer equipment - including desktops, notebooks, and other portable devices - used in connection with this agreement. The Contractor will also assure that any media or mechanism used to store or transfer data to or from the State includes industry standard security mechanisms such as continually up-to-date malware protection and encryption. The Contractor will make every reasonable effort to ensure media or data files transferred to the State are virus and spyware free. At the conclusion of this agreement and after successful delivery of the data to the State, the Contractor shall securely delete data (including archival backups) from the Contractor's equipment that contains individually identifiable records, in accordance with standards adopted by the Agency of Human Services.

12. **Computing and Communication:** The Contractor shall select, in consultation with the Agency of Human Services' Information Technology unit, one of the approved methods for secure access to the State's systems and data, if required. Approved methods are based on the type of work performed by the Contractor as part of this agreement. Options include, but are not limited to:

1. Contractor's provision of certified computing equipment, peripherals and mobile devices, on a separate Contractor's network with separate internet access. The Agency of Human Services' accounts may or may not be provided.
2. State supplied and managed equipment and accounts to access state applications and data, including State issued active directory accounts and application specific accounts, which follow the National Institutes of Standards and Technology (NIST) security and the Health Insurance Portability & Accountability Act (HIPAA) standards.

The State will not supply e-mail accounts to the Contractor.

13. **Lobbying.** No federal funds under this agreement may be used to influence or attempt to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, continuation, renewal, amendments other than federal appropriated funds.
14. **Non-discrimination.** The Contractor will prohibit discrimination on the basis of age under the Age

Discrimination Act of 1975, on the basis of handicap under section 504 of the Rehabilitation Act of 1973, on the basis of sex under Title IX of the Education Amendments of 1972, or on the basis of race, color or national origin under Title VI of the Civil Rights Act of 1964. No person shall on the grounds of sex (including, in the case of a woman, on the grounds that the woman is pregnant) or on the grounds of religion, be excluded from participation in, be denied the benefits of, or be subjected to discrimination, to include sexual harassment, under any program or activity supported by state and/or federal funds.

The Contractor will also not refuse, withhold from or deny to any person the benefit of services, facilities, goods, privileges, advantages, or benefits of public accommodation on the basis of disability, race, creed, color, national origin, marital status, sex, sexual orientation or gender identity under Title 9 V.S.A. Chapter 139.

15. **Environmental Tobacco Smoke.** Public Law 103-227, also known as the Pro-children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, child care, early childhood development services, education or library services to children under the age of 18, if the services are funded by federal programs either directly or through state or local governments, by federal grant, contract, loan or loan guarantee. The law also applies to children's services that are provided in indoor facilities that are constructed, operated, or maintained with such Federal funds.

The law does not apply to children's services provided in private residences; portions of facilities used for inpatient drug or alcohol treatment; service providers whose sole source of applicable federal funds is Medicare or Medicaid; or facilities where Women, Infants, & Children (WIC) coupons are redeemed.

Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1,000 for each violation and/or the imposition of an administrative compliance order on the responsible entity.

Contractors are prohibited from promoting the use of tobacco products for all clients. Facilities supported by state and federal funds are prohibited from making tobacco products available to minors.

**Department of Vermont Health Access  
Subcontractor Compliance Form**

Date: \_\_\_\_\_

Original Contractor/Grantee Name: \_\_\_\_\_ Contract/Grant #: \_\_\_\_\_

Subcontractor Name: \_\_\_\_\_

Scope of Subcontracted Services:

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Is any portion of the work being outsourced outside of the United States? ☐ YES ☐ NO  
(If yes, do not proceed)

All vendors under contract, grant, or agreement with the State of Vermont, are responsible for the performance and compliance of their subcontractors with the Standard State Terms and Conditions in Attachment C. This document certifies that the Vendor is aware of and in agreement with the State expectation and has confirmed the subcontractor is in full compliance (or has a compliance plan on file) in relation to the following:

- ☐ Subcontractor does not owe, is in good standing, or is in compliance with a plan for payment of any taxes due to the State of Vermont
- ☐ Subcontractor (if an individual) does not owe, is in good standing, or is in compliance with a plan for payment of Child Support due to the State of Vermont.
- ☐ Subcontractor is not on the State's disbarment list.

In accordance with State Standard Contract Provisions (Attachment C), the State may set off any sums which the subcontractor owes the State against any sums due the Vendor under this Agreement; provided, however, that any set off of amounts due the State of Vermont as taxes shall be in accordance with the procedures more specifically provided in Attachment C.

\_\_\_\_\_  
Signature of Subcontractor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Vendor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Received by DVHA Business Office

\_\_\_\_\_  
Date

**Required: Contractor cannot subcontract until this form has been returned to DVHA Contracts & Grants Unit.**